IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2848 OF 2004

Sadiq Adnan Futehally ..Petitioner
Vs.
Qays Munavar Tayyibji ..Respondent

Mr. Vicky Singh i/b. M/s.Nankani & Associates for the Petitioner
Mr. Rohit Kapadia and Mr. Yash Kapadia i/b. Lalit S. Jain for Respondent

CORAM: F.I. REBELLO & S.P.KUKDAY, JJ.
DATE : 15th March, 2005

P.C.

. Rule. Heard forthwith.

2. The petitioner by the present petition, during the pendency of the proceedings before the Arbitral Tribunal, seeks to challenge the order dated 10th November, 2003 whereby an application for inspection and discovery has been rejected. The petitioner has invoked the extra ordinary jurisdiction of this Court to impugn the said order. Reliance is placed on a judgment of this Court in **M/s.Anupech Equipments Private Ltd. vs. M/s.Ganpati Co-operatrive Housing Society Ltd. & Ors.,** **AIR 1999 Bom.219**. Section 5 of the Arbitration & Conciliation Act, 199 reads as under:-

> "Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided so provided in this Part."

It is, therefore, clear that the Judicial Authority normally ought not to intervene in an order passed by the Arbitral Tribunal except as provided in that part. The part provides

for intervention like under Sections 13, 14, 34 and 37. It is true that this would not mean that otherwise the extra ordinary jurisdiction of this Court cannot be invoked if available.

2. In M/s.Anuptech Equipments Private Ltd. (supra) it was found that the proceedings had been terminated consequent to failure of the parties to file the statement of claim within the time directed by the Tribunal. This order was found not to be an Award which is capable of being challenged under Section 34 of the Act of 1996. It is in that limited context that this Court took the view that even though the Arbitral Tribunal strictly may not be a Tribunal yet considering the powers exercised by the person manning the Tribunal a writ in those limited cases could still be issued. Section 89 of the Code of Civil Procedure can also be noted that the Arbitral process is now a recognised form of alternative dispute mechanism to settle disputes. In other words the judgment is restricted to only a class of cases where the proceedings are finally terminated and a party has no remedy under Section 34 and when such orders are not an Award which can be challenged under Section 34.

. Having said so, in our opinion, considering that the proceedings are pending before the Arbitral Tribunal this would not be a fit case for this Court to exercise its extra ordinary jurisdiction.

. Rule discharged. No order as to costs.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)